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Military Retirement: Major Legislative Issues

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Military Retirement: Major Legislative Issues

SUMMARY

The military retirement system includes benefits for retirement after an active or reserve military career, disability retirement, and survivor benefits for eligible survivors of deceased retirees.

Concurrent Receipt. The proposed change to the system that has generated the most recent legislative activity involves whether some or all military retirees should be allowed to receive both military retired pay and any VA disability compensation to which they are otherwise entitled; this is referred to as “concurrent receipt.” Until now, the law provided that military retired pay had be reduced by the amount of VA disability compensation. Some maintained this was inequitable and unfair; it was defended on grounds of cost and of the need to avoid setting a precedent for concurrent receipt of numerous other federal benefits. DOD has estimated that up to 700,000 military retirees (out of a total of 1.7 million) would be eligible for unrestricted concurrent receipt if enacted.

Starting in 1999 (FY2000), provisions in each year’s annual National Defense Authorization Act (NDAA) authorized payments to comparatively small groups of military retirees in lieu of concurrent receipt. The program enacted in 2002, in the FY2003 NDAA, is known as “Combat Related Special Compensation” (CRSC), although it is not limited to only those retirees disabled in combat but applies also to those injured in military operations and training generally, as distinct from those unrelated to military service but incurred while in service. As enacted, CRSC provided for payments that are the financial equivalence of concurrent

receipt. However, like the others, the number of CRSC beneficiaries authorized in 2002 was quite small (in the tens of thousands) because it was limited to retirees with at least a 60% disability or who had received a Purple Heart (i.e., been wounded in combat), regardless of degree of disability. It also excluded virtually all reserve retirees, due to DOD’s interpretation of a technical provision in the law.

The FY2004 NDAA, signed November 24, 2003, for the first time provides the concurrent receipt or its practical and financial equivalence to large numbers of military retirees. The bill, effective January 1, 2004, (1) authorizes the payment of CRSC to all otherwise eligible military retirees, regardless of their percentage of disability; (2) authorizes a ten-year phase-in of concurrent receipt for all military retirees whose disability is 50% or greater, regardless of the origins of their disability; and (3) includes reserve retirees. It has been estimated that up to about 300,000 retirees will be eligible for CRSC or concurrent receipt according to the new law’s criteria.

Changing the 20-Year Retirement Paradigm. A longer-term issue is whether some military personnel retiring with less than 20 years of service and more should serve well past the 20-year point before retiring. Some argue that 20-year retirement is inefficient and expensive. Others believe that it is essential to maintaining a high-quality career force capable of meeting wartime requirements. DOD proposed some changes along these lines, primarily for general and flag officers, in early 2003. However, so far the Congress has been skeptical about such proposals.

MOST RECENT DEVELOPMENTS

On January 1, 2004, a compromise on concurrent receipt of military retired pay and VA disability compensation in the FY2004 National Defense Authorization Act (NDAA) (P.L. 108-136, November 24, 2003; 117 Stat. 1392) became effective. It includes a compromise on concurrent receipt of military retired pay and VA disability compensation, which (1) authorizes the payment of “Combat-Related Special Compensation” (CRSC), originally enacted in 2002 for a small group of retirees, to all otherwise eligible military retirees, regardless of their percentage of disability; (2) authorizes a ten-year phase-in of concurrent receipt for all military retirees whose disability is 50% or greater, regardless of the origins of their disability; and (3) includes reserve retirees (including, by definition those from the National Guard), who, due to DOD’s interpretation of the 2002 CRSC law, had been almost totally ineligible for CRSC. Possible extension of future benefits to less disabled retirees could be among the topics to be studied by a commission the legislation authorizes.

BACKGROUND AND ANALYSIS

Military Retirement: Key Elements and Issues

Conceptual and Political Setting

Congress confronts both constituent concerns and budgetary constraints in considering military retirement issues. The approximately 2.0 million military retirees and survivor benefit recipients, and their roughly six to eight million family members, have been, and continue to be, an articulate and well-educated constituent group familiar with the legislative process and represented by associations staffed with military retirees with long experience in working with Congress. In recent years, the long-standing efforts by military retirees and their associations to secure more benefits for their members have been buttressed by (1) the outpouring of nation-wide nostalgia and support for the past heroism and current old-age needs of the “greatest generation” of World War II-era veterans, whether retirees or not; (2) concern over problems the military services were having in recruiting and retaining sufficient numbers of qualified personnel, which began in the mid-1990s, and the extent to which actual or perceived inadequacies in retirement benefits may have been contributing to these problems; (3) the impression by many current or former military personnel that the Clinton Administration was not favorably disposed toward the military as an institution, leading to efforts to portray increased retirement benefits as a palliative, and (4) in a reversal of the attitudes toward the Clinton Administration, efforts to obtain more benefits from the Bush Administration because it is perceived as being pro-military. And, since September 11, 2001, there has been a predictably dramatic increase in public and congressional support for the Armed Forces.

In addition, it can be posited that the policy choices posed by recently-enacted increased benefits for military retirees are an integral part of a larger debate in the United States over the distribution of pension-type resources among younger workers and older retirees. In the defense context, it may take the form of conflicts between DOD and current active duty and

reserve military personnel on the one hand, with the responsibility of defending the United States in the present, and retired military personnel, many of whom feel that they are losing benefits to which they assumed they would always have access. On the other hand, it can be argued that, in a defense budget close to \$400 billion yearly, benefits that cost the DOD budget only \$7-8 billion yearly are not significant enough to force serious policy choices between current defense capability on the one hand, and, on the other, pensions for those who, despite their patriotic service, are not providing any current defense capability.

In general, in recent years Congress has been more aggressive than the executive branch in responding to the stated concerns of retirees about their benefits. The Department of Defense (DOD) and other executive branch agencies have, over time, tended to regard military retirement benefits as a place where substantial budgetary savings could be made. For instance, as noted below, Congress took the initiative in 1999 to repeal the “Redux” cuts in future military retired pay that was originally enacted in 1986.

Program Summary

In FY2004, total federal budget outlays for military retirement will be an estimated \$36.7 billion and DOD budget outlays will be an estimated \$12.5 billion. (The differing figures for total federal and DOD outlays result from the use of the accrual method in accounting for the costs of military retirement. See the section below on *Cost Data* for a discussion of accrual accounting. These numbers, taken from **Table 2**, below, also differ slightly from those in **Table 1**, immediately below, for purely technical reasons without policy significance.) **Table 1** shows the estimated numbers of retirees, and the costs to the federal government of the retired pay they receive, for FY2003-FY2005.

**Table 1. DOD Retired Military Personnel and Survivors:
Estimated Numbers and Costs, FY2003-FY2005**

	Total	Retirees from an Active Duty Military Career	Disability Retirees	Reserve Retirees	Survivor Benefit Recipients
FY2005	2,051,000/ \$37.69 billion	1,392,000/ \$31.01 billion	86,000/ \$1.18 billion	274,000/ \$3.17 billion	299,000/ \$2.33 billion
FY2004	2,029,000/ \$36.67 billion	1,386,000/ \$30.25 billion	88,000/ \$1.20 billion	266,000/ \$3.00 billion	289,000/ \$2.22 billion
FY2003	2,006,000/ \$35.73 billion	1,379,000/ \$29.56 billion	91,000/ \$1.22 billion	258,000/ \$2.84 billion	278,000/ \$2.11 billion

Sources: Office of the Actuary. Department of Defense. *Valuation of the Military Retirement System. September 30, 2001:* K-8, K-10, K-14, K-16, L-2, and L-4. Document available online from the Office of the DOD Actuary at [<http://dod.mil/actuary/>].

“Redux”: Its 1986 Enactment and 1999 Repeal

Cuts in retired pay for future retirees were enacted in the Military Retirement Reform Act of 1986 (P.L. 99-348, July 1, 1986; the “1986 Act,” now referred to frequently as the

“Redux” military retirement system). Although enactment of Redux in 1986 represented a success for those who argued that the pre-Redux system was too generous, the repeal of compulsory Redux in late 1999 by the FY2000 National Defense Authorization Act indicated that, at least in Congress, those who defend the pre-Redux system are again ascendant.

Congress began taking notice publicly of potential problems related to Redux in 1997, well before the executive branch addressed the issue. During the fall of 1998, the Administration announced that it supported Redux repeal. Eventually, the FY2000 National Defense Authorization Act contained provisions for repealing compulsory Redux; it allows post-August 1, 1986 entrants to retire under the pre-Redux system or opt for Redux plus an immediate \$30,000 cash payment(see below).

Entitlement to Retired Pay and Retired Pay Computation Base

A service member becomes entitled to retired pay upon completion of 20 years of service, regardless of age. (The average nondisabled enlisted member retiring from an active duty military career in FY2001 was 42 years old and had 22 years of service; the average officer was 47 years old and had 24 years of service.) A member who retires from active duty is paid an immediate monthly annuity based on a percentage of his or her retired pay computation base. For persons who entered military service before September 8, 1980, the retired pay computation base is final monthly basic pay being received at the time of retirement. For those who entered service on or after September 8, 1980, the computation base is the average of the highest 3 years (36 months) of basic pay. (Basic pay is one component of total Regular Military Compensation, or RMC, which consists of basic pay, housing and subsistence allowances, and the federal tax advantage that accrues because the allowances are not taxable. Basic pay comprises approximately 70% of the total for all retirement eligibles: 75% for 30-year retirees and 66% for 20-year retirees. Thus, the 20-year retiree may get 50% of retired pay computation base upon retirement, but only 33% of RMC. The 30-year retiree will receive 75% of the computation base, but only 56% of RMC. Nor do any of these calculations include any of the many special pays, bonuses or other cash compensation to which many military members are entitled.)

Retired Pay Computation Formula

Military Personnel Who First Entered the Service before August 1, 1986.

All military personnel who first entered military service *before* August 1, 1986, have their retired pay computed at the rate of 2.5% of the retired pay computation base for each year of service. The minimum amount of retired pay to which a member entitled to compute his or her retired pay under this formula is therefore 50% of the retired pay computation base (20 years of service X 2.5%). A 25-year retiree receives 62.5% of the computation base (25 years of service X 2.5%). The maximum, reached at the 30-year mark, is 75% of the computation base (30 years of service X 2.5%).

Military Personnel Who First Entered the Service on or after August 1, 1986. Personnel who first enter service *on or after* August 1, 1986, in accordance with the provisions of the FY2000 National Defense Authorization Act, are required to select one of two options in calculating their retired pay within 180 days of reaching 15 years of service:

Option 1: Pre-Redux. They can opt to have their retired pay computed in accordance with the pre-Redux formula, described above, but with a slightly modified COLA formula, which is less generous than that of the pre-Redux formula (see below, under COLAs).

Option 2: Redux. They can opt to have their retired pay computed in accordance with the Redux formula and receive an immediate \$30,000 cash bonus (which can actually be paid in several annual installments if the recipient so wishes, for tax purposes).

The Redux Formula: Under Age 62 Retirees. Redux is different from the previous formula in two major ways. First, for retirees under age 62, retired pay will be computed at the rate of 2.0% of the retired pay computation base for each year of service through 20, and 3.5% for each year of service from 21-30. Under this new formula, therefore, a 20-year retiree will receive 40% of his or her retired pay computation base upon retirement (20 years of service X 2.0%), and a 25-year retiree will receive 57.5% of the computation base [(20 years of service X 2.0%) + (5 years of service X 3.5%)]. A 30-year retiree, however, will continue to receive 75% of the retired pay computation base [(20 years of service X 2.0%) + (10 years of service X 3.5%)]. The changed formula, therefore, is “skewed” much more sharply in favor of the longer-serving military careerist, theoretically providing an incentive to remain on active duty longer before retiring.

The Redux Formula: Retirees 62 and Older. Second, when a retiree reaches age 62, his or her retired pay will be recomputed based on the old formula, a straight 2.5% of the retired pay computation base for each year of service. Thus, beginning at 62, the 20-year retiree receiving 40% of the computation base for retired pay, according to the new formula, will begin receiving 50% of his or her original computation base; the 25-year retiree’s annuity will jump from 57.5% of the original computation base to 62.5%; and the 30-year retiree’s annuity, already at 75% of the original computation base under both the old and new formulas, will not change. (Note: this change is an increase in monthly retired pay, not a lump sum at age 62.)

Temporary Early Retirement Authority (TERA), 1992-2001 (FY1993-FY2001)

The FY1993 National Defense Authorization Act (Sec. 4403, P.L. 102-484) granted temporary authority (which expired on September 30, 2001) for the services to offer early retirements to personnel with more than 15 but less than 20 years of service. TERA retired pay was calculated in the usual ways except that there is an additional reduction of one percent for every year of service below 20. Part or all of this latter reduction could be restored if the retiree worked in specified public service jobs (such as law enforcement, firefighting, and education) during the period immediately following retirement, until the point at which the retiree would have reached the 20-year mark if he or she had remained in the service.

Military Retired Pay and Social Security

Military personnel do not contribute a percentage of their salary to help pay for retirement benefits. They have paid taxes into the social security trust fund since January 1,

1957, and are entitled to full social security benefits based on their military service. Military retired pay and social security are not offset against each other; military retirees receive full social security benefits in addition to their military retired pay.

Modifying 20-Year Retirement

For more than 30 years, the military retirement system, in particular, its central feature of allowing career personnel to retire at any age with an immediate annuity upon completing 20 years of service, has been the object of intense criticism and equally intense support among military personnel, politicians, and defense manpower analysts. Critics of the system have alleged, since its basic tenets were established by legislation enacted in the late 1940s, that it costs too much, has lavish benefits, and contributes to inefficient military personnel management by inducing too many personnel to stay until the 20-year mark and too few to stay beyond the 20-year mark. Others have strongly defended the existing system as essential to recruiting and maintaining sufficient high-quality career military personnel who could withstand the rigors of arduous peacetime training and deployments as well as war. They tend to agree with the statement that “20-year retirement makes up with power what it lacks in subtlety,” by providing a 20-year “pot of gold at the end of the rainbow.”

Secretary of Defense Rumsfeld and other senior defense officials have suggested on several occasions that the existing 20-year retirement paradigm should be modified. Legislative proposals sent to Congress by DOD in late April 2003, included provisions to extend or eliminate a variety of age and years-of-service limits for general officers. The net effects of these provisions would be to prevent the mandatory retirement of skilled high-level officers who might otherwise want to stay on active duty; give DOD and the military services more flexibility in managing the senior uniformed leadership of the services; allow generals and admirals to serve longer tours of duty and minimize too-frequent rotation of assignments; and provide greater compensation incentives related to the greater lengths of service. However, some opposed to them are concerned about longer terms for generals and admirals resulting in excessive stultification and stodginess in the senior uniformed leadership; an excessive slowing of promotions, as more people stay on active duty in the same grade for longer periods of time; and, combined with other measures in the proposed bill, a greater alignment of the senior generals and admirals with the senior appointed political leadership of DOD, and, hence, the Administration and political party in power. Only one of these proposals — arguably one of the less significant ones — was adopted in the FY2004 National Defense Authorization Act — specifically, the reduction in years in grade before an officer is allowed to retire in that grade.

Retired Pay and Survivor Benefit COLAs

Military retired pay is protected against inflation by statute (10 USC 1401a). The Military Retirement Reform Act of 1986, in conjunction with recent changes in the FY2000 National Defense Authorization Act, provides for cost of living adjustments (COLAs) as indicated below. Congress has not modified the COLA formula since FY1996 (1995), although virtually every year since 1982 some COLA modifications, always with the aim of reducing costs and hence the payments to retirees, have been at least discussed. Therefore,

it is probably inadvisable to assume at any time that COLAs will be totally off the table in future Congresses. For further information on COLAs, see CRS Report 98-223, *COLAs for Military Retirees: Summary of Congressional and Executive Branch Action, 1982-2002 (FY1983-FY2003)*.

What Was the Last COLA and What Will be the Next COLA?

The most recent military retirement COLA was **2.1%**, first applied to the retired pay disbursed on **January 1, 2004**. For a discussion of proposed and actual COLA changes over the past 20 years, see CRS Report 98-223, *COLAs for Military Retirees: Summary of Congressional and Executive Branch Action, 1982-2002 (FY1983-FY2003)*.

COLAs for Pre-August 1, 1986 Entrants

For military personnel who first entered military service before August 1, 1986, each December a cost-of-living-adjustment (COLA) equal to the percentage increase in the Consumer Price Index (CPI) between the third quarters of successive years will be applied to military retired pay for the annuities paid beginning each January 1. For example, assume that the Consumer Price Index rises from 400.0 in September 2005 to 412.0 in September 2006, an increase of 12.0 points or 3.0% of 400.0. The monthly retired pay that accrues during December 2006, and will actually be paid to retirees on January 1, 2007, would be increased by 3.0% above that amount paid the previous month.

COLAs for Personnel Who Entered Service On or After August 1, 1986

For those personnel who first entered military service on or after August 1, 1986, the FY2000 National Defense Authorization Act provides that their COLAs will be calculated in accordance with either of two methods, as noted below.

Non-Redux Recipients. Those personnel who opt to have their retired pay computed in accordance with the pre-Redux formula will have their COLAs computed as described above for pre-August 1, 1986 entrants.

Redux/\$30,000 Cash Bonus Recipients. Those personnel who opt to have their retired pay computed in accordance with the Redux formula, and receive the \$30,000 cash bonus, will have their COLAs computed as follows. Annual COLAs will be held to one percentage point below the actual inflation rate for retirees under age 62. Retirees covered by this new COLA formula would thus receive a 2.0% increase (rather than 3.0%) in their military retired pay under the hypothetical example described in the above paragraph. When a retiree reaches age 62, there will be a one-time recomputation of his or her annuity to make up for the lost purchasing power caused by the holding of COLAs to the inflation rate minus one percentage point. This recomputation will be applied to the old, generally more liberal retired pay computation formula on which retirees 62 or older will have their annuities computed (see the above subsection entitled *Retired Pay Computation Formula*), compounding, for most retirees, the size of this one-time annuity increase. After the recomputation at 62, however, future COLAs will continue to be computed on the basis of the inflation rate minus one percentage point.

Costs and Benefits of the Two Retirement Alternatives. An analysis of the economic effects for hypothetical retirees indicates that in almost all cases opting for the pre-Redux formula will pay the individual much more over time. A report of the Center for Naval Analyses states that the more liberal retired pay computation formula and COLA formula of pre-Redux far outweighs the short-term benefits of a \$30,000 pre-tax cash bonus. The report did say that it might be possible for an individual investor to “beat” these negative aspects of the bonus by wise investment decisions but that it would be difficult. Naturally, no study can know what an individual’s financial situation is. At first, only a fairly small percentage of personnel opted for the \$30,000 lump sum. However, the proportion has been rising, despite the fact that in virtually all cases it provides less money in the long run.

Military Retirement Budgeting and Costs

Accounting for Military Retirement in the Federal Budget

All DOD budgets through FY1984 reflected the costs of retired pay actually being paid out to personnel who had already retired. Congress simply appropriated the amount of money required to pay current retirees each year. Since FY1985, the “accrual accounting” concept has been used to budget for the costs of military retired pay. Under this system, the DOD budget for each fiscal year reflects the estimated amount of money that must be set aside and accrued at interest from investment in special, non-marketable U.S. government securities similar in some ways to Treasury bills and bonds. This interest funds the retired pay to which persons currently in the Armed Forces during that fiscal year, and who ultimately retire, will be entitled in the future. These estimated future retirement costs are arrived at by making projections based on the past rates at which active duty military personnel stayed in the service until retirement, and on assumptions regarding the overall U.S. economy, such as interest rates, inflation rates, and military pay levels. These DOD budget outlays for retirement are computed as a percentage of a fiscal year’s total military pay costs for each military service. Approximately 35-40% of military basic pay costs must be added to the DOD personnel budget each fiscal year to cover the future retirement costs of those personnel who ultimately retire from the military.

DOD budget outlays in each fiscal year that pay for the estimated cost of future retirees are transferred in a paper transaction to a Military Retirement Fund, located in the Income Security Function of the federal budget. The Military Retirement Fund also receives [paper] transfers from the General Fund of the Treasury to fund the initial unfunded liability of the military retirement system. This is the total future cost of military retired pay that will result from military service performed prior to the implementation of accrual accounting in FY1985. Money is disbursed from this Military Retirement Fund to current retirees. Individual retirees continue to receive their retired pay from DOD finance centers. Technically, however, because this money paid to individuals comes not from the DOD budget, but from the Fund, it is paid out by the Income Security function of the federal budget. Actual payments to current retirees thus show up in the federal budget as outlays from the federal budget as a whole, but not from DOD. Under accrual accounting, therefore, total federal outlays for each fiscal year continue to reflect only costs of payments to military members who have already retired, as was the case before accrual accounting began. Accrual

accounting only changes the manner in which the federal government accounts for military retired pay; it does not affect actual payments to individuals in any way.

Unfunded Liability

Current debates over both federal civilian and military retirement have included some discussion of the “unfunded liability” of both. As noted above, the military retirement system’s unfunded liability consists of future retired pay costs incurred before the creation of the Military Retirement Fund in FY1985. These obligations are being liquidated by the payment to the Fund each year of an amount from the General Fund of the Treasury, and will be fully paid, based on current calculations, by FY2033. The unfunded liability at the end of FY2001 was \$539.6 billion; the estimated liability for FY2002 was \$555.2 billion; for FY2003, \$570.1 billion; and for FY2004, \$586.7 billion.

Some concerns have been voiced about the amount of unfunded liability. However, (1) the hundreds of billions of dollars of unfunded liability is a cumulative amount to be paid to retirees over the next 50 years, not all at once; (2) by the time some persons first become eligible for retired pay under the pre-accrual accounting system, many others will have died; and (3) unlike the private sector, there is no way for employees to claim immediate payment of their future benefits. An analogy would be that most homeowners cannot afford to pay cash for a house, so they get a mortgage. If the mortgage had to be paid in full, almost no homeowners could afford to do so. However, spread out over 30 years, the payments are affordable. Similarly, the unfunded liability of federal retirement programs is affordable when federal retirement outlays are spread over many decades.

Military Retirement Cost Trends

Because military retirement is an entitlement, rather than a discretionary program, its costs to the *total federal budget* (payments to current retirees and survivors) always rise modestly each year, due to a predictable slow rise in the number of retirees and survivors. The cost to DOD (estimated future retirement costs of current personnel) declined after FY1989 (the beginning of the post-Cold War drawdown), as the size of the force, and therefore the number of people who will retire from it in the future, declined. However, as the drawdown stabilized, so did the DOD budget costs of retirement. **Table 2** indicates the costs of military retired pay in federal budget outlays (payments to current retirees) and Department of Defense accrual outlays (money set aside to fund future retirees).

Table 2. Military Retirement Outlays
(billions of current dollars)

	Total Federal Budget Outlays	Accrual Outlays from DOD Budget
Estimated FY2004*	\$36.7	\$12.5
Estimated FY2003*	35.9	12.1
Actual FY2002*	35.1	12.9
Actual FY2001**	34.1	11.4
Actual FY2000**	32.9	11.6

*FY2004 *Budget of the United States Government*. Appendix: 859.

**FY2003 *Budget of the United States Government*. Appendix: 903.

Concurrent Receipt of Military Retired Pay and VA Disability Compensation

Military Retired Pay and VA Disability Compensation: Overview

Most people familiar with military retirement would probably agree that the most controversial military retirement issue that is currently the object of intense congressional interest is that involving concurrent receipt of military retired pay and Department of Veterans' Affairs (VA) disability compensation. Until 2004, the law required that military retired pay be reduced by the amount of any VA disability compensation received. For many years some military retirees had sought a change in law to permit receipt of all or some of both, and legislation to allow this has been introduced during the past several Congresses, frequently having co-sponsors well above half of both the House and the Senate. This issue is referred to as "concurrent receipt," because it would involve the simultaneous receipt of two types of benefits. In 1999, legislation was enacted to provide "special compensation" to certain severely disabled military retirees who would be eligible for concurrent receipt if concurrent receipt were ever enacted. This legislation was amended in 2000, 2001, and 2002 to increase the amount of benefits. Also, in 2002, further legislation, known as "combat-related special compensation," or CRSC, was enacted. It provides, for certain seriously disabled retirees, a cash benefit financially identical to what concurrent receipt would provide them. Neither type of "special compensation" removed the statutory prohibition on actual concurrent receipt.

The FY2004 National Defense Authorization Act (NDAA), authorizes, for the first time, actual concurrent receipt as well as a greatly expanded CRSC program; this is discussed in greater detail below.

The George W. Bush Administration (and the Clinton Administration before it) has been consistently opposed to concurrent receipt. However, although the Administration threatened vetoes of concurrent receipt in 2002 and earlier in 2003, no such actions appeared to have even been contemplated, let alone actually occurring, regarding the FY2004 NDAA the President signed on November 24, 2003.

VA Disability Compensation. To qualify for VA disability compensation, a determination must be made by the VA that the veteran sustained a particular injury or disease, or had a preexisting condition aggravated, while serving in the Armed Forces. Some exceptions exist for certain conditions that may not have been apparent during military service but which are presumed to have been service-connected. The VA has a scale of 10 ratings, from 10% to 100%, although there is no special arithmetic relationship between the amount of money paid for each step. Each percentage rating entitles the veteran to a specific level of disability compensation. In a major difference from the DOD disability retirement system, a veteran receiving VA disability compensation can ask for a medical reexamination at any time (or a veteran who does not receive disability compensation upon separation from service can be reexamined later). All VA disability compensation is tax-free, which makes receipt of VA compensation desirable, even with the operation of the offset.

Interaction of DOD and VA Disability Benefits. Military retirees can also apply to the VA for disability compensation. This can be advantageous to retirees who have a

DOD disability rating. For instance, a retiree whose retired pay is offset by the retiree's VA compensation nonetheless receives some advantage because the VA compensation is totally tax-free. Also, a retiree may (1) apply for VA compensation any time after leaving the service and (2) have his or her degree of disability changed by the VA as the result of a later medical reevaluation, as noted above. Many retirees seek benefits from the VA years after retirement for a condition that may have been incurred during military service but that does not manifest itself until many years later. The DOD and VA disability rating systems have much in common as well as significant differences. DOD makes a determination of eligibility for disability retirement only once, at the time the individual is separating from the service. Although DOD uses the VA schedule of types of disabilities to determine the percentage of disability, DOD measures disability, or lack thereof, against the extent to which the individual can or cannot perform military duties, rather than his or her ability to perform post-service civilian work. A military retiree, regardless of his or her DOD disability status immediately upon retirement, can apply for VA disability compensation at any time after leaving active military duty. Military disability retired pay is usually taxable, unless related to a combat disability. For further discussion of these and other relevant issues, see CRS Report 95-469, *Military Retirement and Veterans' Compensation: Concurrent Receipt Issues*.

Repeal of "Special Compensation" For Severely Disabled Retirees

The FY2000, FY2001, and FY2002 National Defense Authorization Acts authorized what was, in effect, *de facto* concurrent receipt for severely disabled military retirees, known in statute as "special compensation." This program provided for specific monthly payments for military retirees with at least a 60% VA disability, if the disability rating was received from the VA within 4 years of retiring from military service. It was limited to retired personnel with at least 20 years of service. The total number of people eligible as of late 2003 was estimated to be about 23,000. This type of special compensation will be repealed upon enactment of the conference version of the FY2004 NDAA, because it is being replaced, in general terms, by the concurrent receipt benefits in the new law.

"Combat Related Special Compensation" (CRSC) for Certain Disabled Retirees

The FY2004 NDAA (Sec. 642) repealed the 60% minimum disability requirement for CRSC contained in the FY2003 NDAA, enacted in 2002. Effective January 1, 2004, CRSC is now available to *any* retiree who meets the other eligibility criteria (at least 20 years of service; a Purple Heart; and/or injuries sustained while performing military duty in a combat situation, or with military equipment, or during military training, as described below in more detail).

In 2002, the FY2003 NDAA (Sec. 636, P.L. 107-314; 116 Stat. 2458) authorized "Combat Related Special Compensation," or CRSC for military retirees who have at least 20 years of service and who have *either*:

- A disability that is “attributable to an injury for which the member was awarded the Purple Heart,” and is not rated as less than a 10% disability by DOD or the VA; *or*
- At least a 60% disability rating from either DOD or the VA, incurred due to involvement in “armed conflict,” “hazardous service,” “duty simulating war,” and “through an instrumentality of war.” This appears, in lay terms, to encompass combat with any kind of hostile force; hazardous duty such as diving, parachuting, using dangerous materials such as explosives, and the like; individual training and unit training and exercises and maneuvers in the field; and “instrumentalities of war” such as accidents in combat vehicles or, if due to training-related activities, aboard naval vessels or military aircraft, and accidental injuries due to occurrences such as munitions explosions, injuries from gases or vapors related to training for combat, and the like.

Note that these criteria remain identical in 2004; the only change is the repeal of the 60% rating limit.

CRSC payments will be equal to the amount of VA disability compensation to which the retiree is entitled, but the new legislation does *not* end the requirement that the retiree’s military retired pay be reduced by whatever VA compensation to which the retiree is entitled. Therefore, CRSC beneficiaries will receive the financial equivalence of concurrent receipt, but in legal and statutory terms it will *not* constitute concurrent receipt, and the statute also states that it explicitly is *not* retired pay *per se*. According to news reports, DOD has decided on a preliminary basis that the CRSC payments should *not* be subject to federal income tax. Applications and information are available on two Defense Department web sites: [<https://www.dmdc.osd.mil/crsc>] or [<http://www.dior.whs.mil/forms/DD2860.PDF>]. Retirees may also phone the retirement services offices of their service for the necessary information.

CRSC for Reserve Retirees. The revised CRSC statute in the FY2004 NDAA clearly states that personnel who qualify for reserve retirement by having at least 20 years of duty creditable for reserve retirement purposes are eligible for CRSC. When CRSC was enacted in 2002, DOD interpreted the law as requiring reserve retirees to have at least 7,200 reserve retirement “points” to be eligible for CRSC. A reservist receives a certain number of retirement points for varying levels of participation in the reserves, or active duty military service. The 7,200 point figure was extraordinarily high — in fact, it could only have been attained by a reservist who had at least 20 years of *active duty* military service. Hence, the original law effectively denied CRSC to reservists.

Concurrent Receipt for Retirees with 50% or Greater Disability

In addition to greatly expanding CRSC, the FY2004 NDAA (Sec. 641) authorizes, for the first time, actual concurrent receipt for retirees with at least a 50% disability, regardless of the cause of disability. However, the amount of concurrent receipt will be phased in over a 10-year period, from 2004 to 2013. Depending on the degree of disability, the initial amount of retired pay that the retiree could receive would vary from \$100 to \$750 per month, or the actual amount, whichever is less. By 2014, the decrease in retired pay would be totally

eliminated. As with the revised CRSC, this concurrent receipt benefit is also available to those reservists with at least 20 years of service creditable for reserve retirement purposes.

The actual operation of the new concurrent receipt benefit is complicated, due to its progressive implementation over several years. It uses both dollar amounts and percentage amounts and varies in accordance with the degree of disability and by calendar year (*not* fiscal year) as follows:

2004. In calendar year 2004, military retirees entitled to VA disability compensation will be entitled to receive, in addition to that part of their military retired pay which is greater than the total VA compensation to which they are entitled, the following additional amounts of retired pay:

100% disability:	Up to \$750 per month additional retired pay
90% disability:	Up to \$500 per month additional retired pay
80% disability:	Up to \$350 per month additional retired pay
70% disability:	Up to \$250 per month additional retired pay
60% disability:	Up to \$125 per month additional retired pay
50% disability:	Up to \$100 per month additional retired pay

Example. Assume a retiree with 100% disability (i.e., up to \$750 per month as described above) is entitled to \$1,500 per month in military retired pay and \$1,000 per month in VA disability compensation. Until now, due to the ban on concurrent receipt, the retiree would receive only \$500 per month in military retired pay, because the remaining \$1,000 per month of retired pay was offset by the retiree's \$1,000 in VA compensation. However, in 2004, this hypothetical retiree's military retired pay would increase to \$1,250 per month (the \$500 unaffected by the VA compensation and an additional \$750 per month, for a total of \$1,250). However, \$250 of the \$1,000 in monthly VA compensation would still be offset.

2005. In calendar year 2005, military retirees entitled to VA disability compensation will be entitled to any such amounts received in 2004 and an additional 10% of the offset that was remaining in 2004. For example, using the hypothetical 100% disability case shown above, the retiree would receive the same amount of retired pay as in 2004 plus 10% of the \$250 in VA compensation that had not yet been offset, or an additional \$25. Thus, the retiree in this example would be receiving the \$1,250 monthly received in 2004 plus an additional \$25, or \$1,275 — leaving \$225 of the VA compensation still being deducted from the retiree's DOD retired pay.

2006. In calendar year 2006, the same procedure as in 2005 would apply, but the retirees affected would get an additional 20% of their remaining offset from 2004. Thus, the retiree in this example would be receiving the \$1,250 monthly received in 2004 plus an additional \$50, or \$1,300 — leaving \$200 of the VA compensation still being deducted from the retiree's DOD retired pay.

2007-2014.

- 2007 — An additional 30%
- 2008 — An additional 40%
- 2009 — An additional 50%
- 2010 — An additional 60%
- 2011 — An additional 70%
- 2012 — An additional 80%
- 2013 — An additional 90%
- 2014 — All offsets would end; military retirees with at least a 50% disability would be allowed to receive their entire military retired pay and VA disability compensation.

For those retirees who retire after 2004, their initial amounts will be the dollar amount prescribed for each percentage of disability (the range listed above between \$100 and \$750, depending on degree of disability), plus the additional percentage of that dollar amount for that year. Thus, a retiree who first retires in, say, 2006, with an 80% disability will begin receiving an additional \$420 monthly of his or her retired pay (the \$350 that an 80% disabled retiree is entitled to, as noted above, plus the additional 20% of \$350, or \$70, specified for 2006).

Because of the high initial amounts provided to severely disabled retirees, this new concurrent receipt benefit is “front-loaded”; that is, most retirees will be able to concurrently receive most of their military retired pay within a few years of enactment of the law.

Costs and Numbers of Beneficiaries of Concurrent Receipt/CRSC

Estimates of the costs and numbers of eligible beneficiaries of the concurrent receipt-related provisions in the FY2004 NDAA vary considerably. Some sources say it would cost \$22 billion over the next ten years; others say \$30 billion.¹ The *Army Times*, an unofficial, but often regarded as authoritative, newspaper serving the military community, has stated that “it appears that of the estimated 645,000 military retirees who have their retired pay reduced [by the amount of VA compensation they now receive], about 295,000 would get full retired and disability checks within five years under the plan. Only about 85,000 of the 460,000 military retirees with disabilities rated at 40 percent or less are expected to qualify for full concurrent receipt because their disabilities are combat- or training-related.”²

According to the most recent Congressional Budget Office (CBO) estimates, *full* concurrent receipt, if it had been enacted in time for FY2004 to begin, would have cost approximately \$3 billion in FY2004, rising to \$5 billion by FY2013, and totaling \$41 billion over the ten-year period FY2004-FY2013. Almost 700,000 retirees would have been eligible

¹ Neils C. Sorrells, “Veterans Call ‘Concurrent Receipt’ Deal a Good First Step, Vow Further Action.” *Congressional Quarterly Weekly*, October 18, 2003: 2579; Rick Maze, “Lawmaker: Framework Set for Concurrent Receipt Deal.” *Army Times*, October 20, 2003: 40.

² Ibid.

for full concurrent receipt in FY2004. At the other extreme, some of the very restrictive concurrent receipt options considered (for example, limiting it to 100% actual combat-disabled retirees) would have applied to only a few thousand retirees, and hence have been estimated to have annual costs of few tens of millions of dollars.

Pros and Cons of Concurrent Receipt

These are only the most frequently cited positions on the issue. See CRS Report 95-469, *Military Retirement and Veterans' Compensation: Concurrent Receipt Issues*, for more arguments pro and con concurrent receipt.

Major Arguments *in Favor* of Concurrent Receipt.

(1) Military retired pay, was earned for length of service; the VA disability compensation, for disability. They were therefore for two different things and did not constitute a duplication of benefits.

(2) If cost was an issue, partial concurrent receipt should be allowed for those most severely disabled, with combat disability, or whose benefits or total income are the least.

(3) VA disability compensation beneficiaries are entitled to other federal benefits; why not military retired pay?

(4) People receiving VA disability compensation can receive pensions from a wide variety of other sources without any offset; why target military retirees?

Major Arguments *Against* Concurrent Receipt.

(1) The cost of full, or nearly full, concurrent receipt would be enormous — some estimates say almost \$5 billion yearly. (See CRS Report RS21327, *Concurrent Receipt of Military Retirement and VA Disability Benefits: Budgetary Issues*.)

(2) Eliminating or reducing this offset would “be sticking the camel’s nose into the tent,” setting a precedent for the reduction or elimination of all kinds of similar offsets of one or more federal payments, possibly costing billions of dollars (a CRS study identified at least 25 such offsets; see pp. 43-47 of CRS Report 95-469, *Military Retirement and Veterans' Compensation: Concurrent Receipt Issues*).

(3) Concurrent receipt could result in some individuals getting a new VA medical evaluation, resulting in a higher disability rating and hence eligibility for concurrent receipt benefits, or getting a VA evaluation when they had hitherto not done so. Both results would lead to more people getting VA compensation for the first time or higher amounts of it.

(4) Although some federal programs do not have an offset against VA disability compensation, there are no such offsets involving disability and retirement from the same job and agency where the disability occurred.

(5) VA disability compensation is supposedly authorized much more liberally than military disability retired pay, and a VA disability can be certified many years after a person

leaves active military service. Concurrent receipt could lead to a windfall for people whose VA disability might have had a tenuous connection with their military service.

(6) Concurrent receipt was never promised to those asking for it.

Veterans Disability Benefits Commission

Title XV of the FY2004 NDAA (Sections 1501-1507) established a Veterans Disability Benefits Commission to “carry out a study of the benefits provided under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.” [Subsection 1502(a).] The motivation for this study appears to have been the adoption of partial concurrent receipt in the FY2004 NDAA and the attention that the concurrent receipt issue has drawn to the current range of benefits for disabled active duty and reserve component military personnel, veterans, and retirees and the benefits for the survivors of deceased members of these groups. The existing panoply of such benefits has grown piecemeal over the past two centuries, leading to complicated interaction among the different types of payments, of which concurrent receipt is only one such example.

The Commission will have 13 members, of which two will be appointed by the Speaker of the House and two by the House minority leader, and two by the Senate majority and two by the Senate minority leader. The five remaining members will be appointed by the president. One of the two members in each of the four congressional categories, and three of the five presidential appointees, must be a veteran who has received any of the following military decorations: Medal of Honor; Distinguished Service Cross (the Army’s “Cross” decoration), Navy Cross (also awarded to members of the Marine Corps and Coast Guard), and Air Force Cross; or the Silver Star. The Commission is required to hold its first meeting within 30 days after a majority of its 13 members have been appointed and must present its report to the President no later than 15 months after its first meeting. The Commission’s report will include recommendations “for revising the benefits provided by the United States to veterans and their survivors for disability and death attributable to military service.” [Subsection 1503(2).]